IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4167 OF 2007.

Ashok Narayan Pujari
M/s.Sapna Lodge. ... Petitioner.
Versus.
Sub-Divisional Magistrar,
Bhiwandi Division, Bhiwandi,
Thane and another. ... Respondents.

Mrs.Veena Thadhani with Shri Vishal Thadhani for the Petitioner.

CORAM : ABHAY S.OKA, J.

DATED : 5th June, 2007.

P.C.:

1. Heard the learned Counsel appearing for the Petitioner. By this petition under Articles 226 and 227 of the Constitution of India, the Petitioner has taken an exception to the order dated 24th April 2006 passed by the Sub-Divisional Officer at Bhiwandi by which the licence granted in favour of the Petitioner of Lodging and Boarding House has been cancelled.

2. The learned Counsel appearing for the Petitioner did not dispute that a statutory appeal is provided for challenging the said order and the appeal has not been preferred. She, however, submitted that the jurisdiction of this Court to entertain Writ Petition is not ousted and considering the peculiar facts of this case, this Court will have to entertain the petition and quash the impugned order. She pointed out that the

order impugned was purportedly passed on 24th April 2006 which has been served to the Petitioner after the disposal of the earlier petition filed by the Petitioner being Writ Petition No.1175 of 2007. She pointed out that in the affidavit-in-reply filed in the said Writ Petition on behalf the Sub-Divisional Officer, it was not even disclosed to this Court that the order dated 24th April 2006 has been passed cancelling the licence. It is submitted that the order impugned has been passed in breach of principles of natural justice and without considering the reply filed by the Petitioner to the show cause notice. Lastly it is submitted that the order is contrary to the law laid down by this Court in Writ Petition No.7271 of 1999 and other petitions. Reliance is also placed on a decision of the Division Bench of this Court in Writ Petition No.5675 of 2006.

3. As stated earlier, it is not in dispute that the remedy of preferring a statutory appeal is available to the Petitioner. Contentions which are raised in this petition as regards the legality of the impugned order can always be raised before the Appellate Authority. It is true that the availability of statutory remedy does not take away the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. However, as a normal rule, a petition should not be entertained unless statutory remedy is exhausted.

4. Therefore, considering the availability of an efficacious remedy of an Appeal, this petition cannot be entertained.

5. Writ Petition is not entertained only on the aforesaid ground and the same is rejected.

6. All contentions of the parties on merit are kept open.

7. If an appeal is preferred by the Petitioner within a period of two weeks from today, the Appellate Authority will give priority to the said Appeal and will decide the same on merits within a period of three weeks from the date of filing of the said Appeal.

8. The parties to act on an authenticated copy of this order.

Judge.